



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEB 25 2013

Jack W. Hoogendyk
Hoogendyk for Congress (C00479329)
8607 W R Avenue
Kalamazoo, MI 49009

RE: MUR 6619

Dear Mr. Hoogendyk:

On August 8, 2012, the Federal Election Commission (the "Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On February 20, 2013, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that you knowingly and willfully violated 2 U.S.C. §§ 441a(f) or 441f, or that Hoogendyk for Congress and you in your official capacity as treasurer knowingly and willfully violated 2 U.S.C. §§ 441a(f) or 441f. In addition, the Commission voted to dismiss the allegation that you knowingly and willfully violated 2 U.S.C. § 432(e)(1). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Traoey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jack W. Hoogendyk

MUR: 6619

Hoogendyk for Congress and Jack W.
Hoogendyk in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Upton for All of Us, alleging violations of the Federal Election Campaign Act of 1971, as amended, (the "Act") by Jack W. Hoogendyk, and Hoogendyk for Congress and Jack W. Hoogendyk in his official capacity as treasurer (the "Committee").

II. FACTUAL AND LEGAL ANALYSIS

The Complaint alleges that Hoogendyk knowingly and willfully violated 2 U.S.C. § 432(e)(1) by filing a late and fraudulently backdated Statement of Candidacy. It further alleges that Hoogendyk and the Committee knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f by facilitating the making of excessive contributions and contributions in the name of another in connection with a fundraising event held by Minde S. Artman.¹

A. Hoogendyk's Failure to Timely File a Statement of Candidacy Does Not Warrant Further Use of Commission Resources.

An individual becomes a "candidate" under the Act when he or she has received in excess of \$5,000 in contributions or made more than \$5,000 in expenditures. 2 U.S.C. § 431(2). Once an individual meets the \$5,000 threshold, he or she has 15 days to designate a

¹ The Complaint also alleges that the Committee violated the Act by distributing contribution solicitations without a disclaimer required by the Internal Revenue Service. The Commission does not address this allegation because it is outside of its jurisdiction.

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principal campaign committee by filing a Statement of Candidacy with the Commission.

2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). The principal campaign committee must file a Statement of Organization within ten days of its designation as principal campaign committee.² 2 U.S.C. § 433(a).

Hoogendyk became a candidate on January 12, 2012, because he received in excess of \$5,000 in contributions on that date; he was therefore required to file a Statement of Candidacy by January 27, 2012. The Complaint alleges Hoogendyk failed to do so.³

Hoogendyk filed two Statements of Candidacy. He filed the first Statement on March 7, 2012, dated the same day, and a second on March 12, 2012, dated January 17, 2012. Compl., Exs. C, D. In cover letters that accompanied both filings, Hoogendyk maintained that he had previously filed a Statement of Candidacy in January 2012, when he became a candidate, but was resubmitting the form because that earlier filing did not appear on the Commission's website. *Id.*

Based on these facts, the Complaint alleges that Hoogendyk filed a late and fraudulently backdated Statement of Candidacy. Compl. at 1-3. Noting that the Committee was required to maintain copies of all records and statements pursuant to 11 C.F.R. § 104.14(b)(2), the Complaint questions why Hoogendyk did not simply provide the

² The Act addresses violations of law that are knowing and willful. See 2 U.S.C. § 437g(a)(5)(B). The phrase "knowing and willful" indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). See also *Federal Election Commission v. John A. Dramei for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986).

³ The Complaint acknowledges that Hoogendyk did, however, file a Statement of Organization on January 25, 2012, identifying himself as a candidate and designating Hoogendyk for Congress as his principal campaign committee. Compl. at 2.

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Commission with a photocopy of his alleged initial filing instead of filing two Statements of Candidacy with different dates.⁴ Compl. at 7.

In response, Hoogendyk maintains that, on January 17, 2012, five days after he became a candidate, he prepared a Statement of Candidacy and mailed it to the Commission. Hoogendyk Resp. at 1. According to Hoogendyk, around March 6, 2012, he learned that the Commission's website did not reflect this Statement of Candidacy and immediately phoned the Commission seeking advice. *Id.* Hoogendyk states that a Commission analyst suggested that he file a new Statement of Candidacy, which he faxed on March 7, 2012. *Id.* He explains that later that day, upon searching for his original Statement of Candidacy dated January 17, 2012, "it was found" and he mailed the Commission a copy. *Id.* This, he explains, is how he ended up filing two copies of the Statement of Candidacy. *Id.* He asserts that the allegation that he fraudulently backdated his Statement of Candidacy is simply untrue. *Id.*

Although Hoogendyk asserts that he mailed a Statement of Candidacy on January 17, 2012, the Commission did not receive it on or before the January 27, 2012, due date.⁵ But because Hoogendyk filed a Statement of Organization identifying himself as a candidate on January 25, 2012, the public was aware that he was a candidate. Thus, as a practical matter,

⁴ The Complaint does not allege that the respondent violated 11 C.F.R. § 104.14(b)(2). Instead it appears to cite the provision only to buttress its allegation that Hoogendyk fraudulently backdated his Statement of Candidacy. Therefore we make no recommendation with respect to this provision. In any event, the requirement to maintain copies at Section 104.14(b)(2) does not apply to Statements of Candidacy. See 11 C.F.R. § 104.14(b)(2) (requires preservation of a copy of each report or statement required to be filed under 11 C.F.R. Part 102 and 104; Statements of Candidacy are required under Part 101).

⁵ The Reports Analysis Division located Hoogendyk's original mailing, which contained his Statement of Organization and was received on January 25, 2012, and verified that a Statement of Candidacy was not included.

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Hoogendyk timely disclosed his candidacy, albeit in the Committee's Statement of Organization and not by also filing a timely Statement of Candidacy.

In light of these circumstances, where the public was timely informed of Hoogendyk's candidacy, the use of further Commission resources is not warranted. Therefore, the Commission exercises its prosecutorial discretion and dismisses the allegation that Hoogendyk violated section 432(e)(1) by failing to timely file a Statement of Candidacy. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

B. The Allegation that Respondents Facilitated the Making of Excessive Contributions and Contributions in the Name of Another is Baseless.

The Act prohibits any person from making contributions "to any candidate and his authorized political committee with respect to any election for federal office which, in the aggregate, exceed \$2,000." 2 U.S.C. § 441a(a)(1)(A). Indexed for inflation, this contribution limit was \$2,500 in the 2012 election cycle. The Act also prohibits any candidate or political committee from knowingly accepting any excessive contribution. 2 U.S.C. § 441a(f). The Act further prohibits a person from making a contribution in the name of another person, knowingly permitting his name to be used to effect such a contribution, or knowingly accepting a contribution made by one person in the name of another. 2 U.S.C. § 441f.

The Complaint alleges that the Respondents facilitated the making of excessive contributions and contributions in the name of another. Compl. at 3-4, 8. Specifically, the Complaint alleges that on July 24, 2012, the Committee sent an e-mail solicitation to supporters that contained a contribution arrangement that "readily enables potentially excessive and impermissible contributions." Compl. at 4. The e-mail stated:

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Stock your kitchen and raise funds for Jack Hoogendyk. Minde Artman, Independent Pampered Chef Consultant, has an Online Pampered Chef Show open. Minde will donate a portion of her commission equal to 15% of the pre tax and shipping sales to Jack's campaign.*

Id. The asterisk points to a statement at the bottom of the e-mail, which explains that "this is not an endorsement from or partnership with The Pampered Chef Company. Minde Artman, Independent Pampered Chef Consultant, is donating from her own personal income." *Id.*

The Complaint explains that this fundraising arrangement facilitates the making of excessive contributions because, for example, if Artman was particularly successful in selling Pampered Chef products to Hoogendyk supporters, it is feasible that 15 percent of her commission could exceed the \$2,500 contribution limit. Compl. at 8. Along the same lines, the Complaint asserts that the arrangement facilitates the making of contributions in the name of another because, by purchasing Artman's products with knowledge that 15 percent of Artman's commission will go to the Hoogendyk campaign, "Hoogendyk supporters would be able to make contributions to his campaign in Artman's name while evading the contribution limits and the disclosure provisions." *Id.*

In response, Hoogendyk explains that Artman, a Pampered Chef consultant, was making a gesture to encourage her friends to purchase products from her business, informing them that a percentage of her profit would be contributed to the Hoogendyk campaign. Hoogendyk Resp. at 2. Hoogendyk asserts that the solicitation explicitly states that any contribution that Artman made would be from her money; that "it would have been highly unlikely that she would sell enough merchandise to reach \$2,500 in contributions"; and that her total contribution to the Committee was \$50. *Id.*

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Artman explains that the Pampered Chef campaign fundraiser could not have allowed her to donate more than the \$2,500 limit because that would have required over \$16,000 in sales, an amount well in excess of revenues generated by her largest show, which produced only \$1,100 in sales. Artman Resp. ¶ 3. Artman further explains that she received two orders totaling \$268.50 from the fundraiser. *Id.* Of that amount, she had committed to donate \$40.38 to the Committee under the fundraising arrangement. *Id.* Rounding up, Artman made a total contribution to the Committee of \$50. *Id.*

There is no factual basis to the Complaint's allegation that the fundraiser at issue facilitated or resulted in excessive contributions or contributions in the name of another. Available information reflects that Artman's contribution to the Committee was just \$50, well below the \$2,500 contribution limit. In addition, the money used for the contribution was made from her own earned income, not money provided to her from other individuals; the solicitation clearly states that Artman was "donating from her own personal income." Thus, there is no information suggesting that contributions were made in the name of another. Consequently, the Commission finds that there is no reason to believe that the Committee and Hoogendyk in his personal capacity knowingly and willfully violated 2 U.S.C. §§ 441a(f) or 441f.